

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LARRY W. BOIN,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

DOCKET NUMBER WD77075

Date: March 3, 2015

Appeal from:
Vernon County Circuit Court
The Honorable James R. Bickel, Judge

Appellate Judges:
Division Four: Alok Ahuja, C.J., P.J., Cynthia L. Martin, J. David H. Miller, Sp. J.

Attorneys:
Judy R. Ullmann, Nevada, MO, for appellant.
Rachel M. Jones, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

LARRY W. BOIN

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

WD77075

Vernon County

In March 2011, Respondent Larry Wayne Boin was stopped and arrested while driving, based on probable cause to believe that he was driving while intoxicated. After being transported to the local jail, Boin refused to submit to a chemical breath test. As a result, Boin's driving privileges were revoked.

At the time of the March 2011 incident, Boin was subject to a ten-year denial of driving privileges under § 302.060.1(9), RSMo, which was set to expire on October 31, 2012. The Director of Revenue takes the position that, under amendments to § 302.060.1(9) enacted in 2012, the revocation of Boin's driving privileges as a result of the March 2011 incident prevents him from obtaining reinstatement of his full driving privileges for ten years, until March 2021.

Boin filed a petition for declaratory judgment more than a year after the March 2011 incident. Boin's original petition acknowledged that he refused a chemical breath test in March 2011. The original petition argued, however, that the 2012 amendments to § 302.060.1(9) could not be applied to him, and therefore the March 2011 revocation did not prevent him from obtaining reinstatement of his driving privileges on October 31, 2012, as originally scheduled.

Boin later filed an amended petition, which alleged that he had not knowingly and voluntarily refused a chemical breath test in the March 2011 incident. The amended petition asked the circuit court to declare the March 2011 revocation void.

The trial court granted the relief requested in Boin's amended petition. The Director appeals.

REVERSED.

Division Four holds:

Section 302.311, RSMo specifies that, if the Director revokes or suspends an individual's driving privileges, that individual may appeal to the circuit court "any time within thirty days after notice that a license is denied or withheld or that a license is suspended or revoked." On its face, Boin's amended petition is a direct attack on the Director's revocation of his license in March 2011, and it was therefore subject to § 302.311's time limitations. Boin was accordingly required to file his petition within 30 days of receiving notice of the revocation of his driving privileges based on the March 2011 incident. Boin's petition does not allege, however, when he was provided with notice of the revocation of his license as a result of the March 2011 incident. Because Boin bore the burden of pleading, and proving, that his petition was timely under § 302.311, the fact that Boin's petition is silent as to when the 30-day filing deadline began to run requires dismissal.

Boin's amended petition cannot be saved by contending that it was a petition for reinstatement of his driving privileges under § 302.060.1(9). The Missouri Supreme Court has held that a driver cannot employ a petition for reinstatement under § 302.060.1(9) to challenge the validity of underlying events which disqualify the driver from obtaining reinstatement (here, the March 2011 revocation).

Although Boin's original petition alleged that he was entitled to reinstatement in October 2012, even if he had refused a chemical breath test during the March 2011 incident, he abandoned this claim when he filed his amended petition without making any reference to the original petition. The separate claim raised in Boin's original petition therefore cannot provide a basis for relief.

Before: Division Four: Alok Ahuja, C.J., Cynthia L. Martin, J., and David H. Miller, Sp. J.

Opinion by: Alok Ahuja, Judge

March 3, 2015

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